



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***January 22, 2013***

# **A.**

## **ADMINISTRATIVE MATTERS**

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b><u>1. Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074, and 3065/3075 (the Filing of Statutorily Required Schedules and Formulas)</u></b> Kathy Tomono; Administration Committee	In December 2011 and March 2012, letters were sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations ("PDI"), PDI schedule of compensation, and warranty reimbursement schedule or formula.	January 2013	In progress. A status report concerning manufacturer and distributor compliance will be presented at the January 22, 2013, General Meeting.
<b><u>2. Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2013	In progress. The revised Guide will be presented at the January 22, 2013, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b><u>1. Host Board Administrative Law Judge Roundtable</u></b> Bill Brennan, Robin Parker; Board Development Committee	Host a Board Administrative Law Judge ("ALJ") Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	May or June 2013	In progress. An ALJ Roundtable will be scheduled for May or June 2013.
<b><u>2. Solon C. Soteras Employee Recognition Award Recipient</u></b> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	June 2013	In progress. The Committee will select a nominee for the Board to consider at the June 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Schedule Board Member Education Presentations</u></b> Robin Parker; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	August 2012	<b><u>Completed</u></b> A schedule of topics and speakers for Board member education was presented at the August 22, 2012, General Meeting.
<b>FISCAL COMMITTEE</b>			
<b><u>1. Quarterly Fiscal Reports</u></b> Dawn Kindel; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> quarter reports for fiscal year 2011-2012 were presented at the December 13, 2011, and May 22, 2012, General Meetings, respectively. The 4 <sup>th</sup> quarter report and 1 <sup>st</sup> quarter report for fiscal year 2012-2013 are scheduled for January 22, 2013.
<b><u>2. Report Concerning Out- of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2013-2014.	January 2013	In progress. A report will be presented for consideration at the January 22, 2013, General Meeting.
<b><u>3. Consideration of the Annual Board Fee</u></b> Dawn Kindel; Fiscal Committee	The staff will present a detailed report concerning the Board's Annual Fee, whether the fee should be increased, and if so, the various options and timeframe.	January 2013	In progress. A report will be presented for consideration at the January 22, 2013, General Meeting.

<b>Project Title/ Manager; Board Committee</b>	<b>Project Goal (Description)</b>	<b>Estimated Completion Date</b>	<b>Status</b>
<b>4. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2013-2014.	June 2013	In progress. The 2013-2014 budget will be presented at the June 2013, General Meeting.
<b><u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2012-2013.	August 2012	<u>Completed</u> The 2012-2013 Budget of \$1.6 million was adopted by the Board.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>1. <u>Host Industry Roundtable</u></b> Bill Brennan, Dawn Kindel, Kathy Tomono; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/ distributors, dealers, in-house and outside counsel, associations and other government entities.	March 2013	In progress. The Roundtable is scheduled for March 14, 2013, in Sacramento.
<b>2. <u>Participant Questionnaires for Industry/ Attorney Roundtable</u></b> Robin Parker; Government and Industry Affairs Committee	Based upon the feedback provided at the Industry/Attorney Roundtable in the questionnaires, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	June 2013	In progress. The questionnaires will be handed out at the Roundtable. A memorandum summarizing the feedback will be presented for information at the June 2013, General Meeting.
<b>3. <u>Host Attorney Roundtable</u></b> Robin Parker; Government and Industry Affairs Committee	Host an Attorney Roundtable in Sacramento that highlights topics of interest to the litigants that regularly appear before the Board.	September 2013	In progress.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b>1. <u>Annual Rulemaking Calendar</u></b> Robin Parker; Policy and Procedure Committee	Consideration of the annual rulemaking calendar if the Board decides to go forward with any new proposed regulatory changes.	January 2013	In progress. The 2013 Rulemaking Calendar will be considered at the January 22, 2013, General Meeting.
<b>2. <u>Amend the Annual Board Fee Regulation (13 CCR § 553)</u></b> Robin Parker; Policy and Procedure Committee	In an effort to address the current economic climate and the Board's decreasing surplus, the annual fee charged to dealers and manufacturers within the Board's jurisdiction needs to be amended so that the fees charged are "sufficient to fully fund the activities of the board..." consistent with Vehicle Code section 3016.	January 2013	In progress. The proposed regulation is being considered at the January 22, 2013, General Meeting.
<b>3. <u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	January 2013	In progress. The updated Guide will be considered at the January 22, 2013, General Meeting.
<b>4. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Dana Winterrowd; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	January 2013	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 22, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>5. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Benchbook</i> .	March 2013	In Progress. The revised ALJ Guide will be considered at the March 13, 2013, General Meeting.
<b>6. <u>Draft New Regulations to Clarify and Improve the Board's Case Management Processes</u></b> Robin Parker, Dana Winterrowd; Policy and Procedure Committee	In an effort to continue to improve and clarify the Board's case management processes, the Board staff has proposed amending four existing regulations and adding one new regulation. The topics encompass definitions, subpoenas, peremptory challenges, sanctions, and adoption and objection to proposed stipulated decisions and orders. If the Board approves the draft regulations, the legal staff will proceed with rulemaking.	December 2013	In progress.
<b>EXECUTIVE COMMITTEE</b>			
<b><u>Sunset Review</u></b> Bill Brennan, Robin Parker, Dana Winterrowd, Dawn Kindel; Executive Committee	In conjunction with the staff, complete the questionnaire requested by the Sunset Review Committee. Staff attended the Sunset Review Committee hearing on March 14, 2012, and worked with the Sunset Review Committee staff to address questions.	December 2012	<u>Completed</u> The Committee Chair has been termed out of office; no hearings have been set in this regard.

# **B. CASE MANAGEMENT**



# CASE VOLUME

AUGUST 9, 2012, THROUGH JANUARY 7, 2013

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	8	5	12
3060	Modification	1	0	2
3062	Establishment	2	1	2
3062	Relocation	7	3	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	0
3065.1	Incentive Program Reimbursement	0	0	0
3070	Termination	0	2	1
3070	Modification	1	2	0
3072	Establishment	0	1	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	3	0
3076	Incentive Program Reimbursement	0	3	0
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		19	20	21

# PENDING CASES

BY CASE NUMBER

## Protests

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	PR-2227-10 4-7-10	Parties finalizing settlement; Informal follow-up: 1-10-13	Michael Cadillac, Inc. dba Michael Porsche v. Porsche Cars of North America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran	Termination
2.	PR-2306-11 6-7-11	Parties finalizing settlement; Informal Follow-up: 1-10-13	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
3.	PR-2328-12 2-23-12	Merits Hearing: 2-4-13	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
4.	*PR-2333-12 2-23-12	Merits Hearing: 2-4-13	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
5.	PR-2336-12 6-19-12	Parties Discussing Settlement; Informal Follow-up: 1-10-13	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc. (W. Stockton Blvd.)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Modification
6.	*PR-2337-12 6-19-12	Parties Discussing Settlement; Informal Follow-up: 1-10-13	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc. (S St.)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination

# PENDING CASES

## BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
7.	PR-2339-12 8-16-12	Hearing Readiness Conference: 3-29-13 Merits Hearing: 4-29-13	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Toyota)	P: Bert Rasmussen Tim Robinett R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
8.	*PR-2340-12 8-16-12	Hearing Readiness Conference: 3-29-13 Merits Hearing: 4-29-13	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Scion)	P: Bert Rasmussen Tim Robinett R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
9.	*PR-2341-12 8-22-12	Hearing Readiness Conference: 3-29-13 Merits Hearing: 4-29-13	Cabe Brothers, a California corporation, dba Cabe Toyota and Cabe Scion v. Toyota Motor Sales, U.S.A., Inc.	P: Greg Ferruzzo Vasko Mitzev R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
10.	*PR-2343-12 8-22-12	Hearing Readiness Conference: 3-29-13 Merits Hearing: 4-29-13	DWWSB, Inc., d/b/a South Bay Toyota and South Bay Scion v. Toyota Motor Sales, U.S.A., Inc., a California corporation	P: Norris Bishton Jeff Gubernick R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
11.	PR-2344-12 9-5-12	Hearing Readiness Conference: 2-19-13 Merits Hearing: 3-12-13	Range Vehicle Center, Inc. d/b/a Range RV v. Winnebago Industries, Inc.	P: Mike Sieving R: Tom Murphy Jeff LePere	RV Termination
12.	PR-2345-12 9-26-12	Resumed Pre- Hearing Conference: 1-16-13	Britalia Motors, LLC, dba Moto Italiano of Santa Cruz v. Ducati North America, Inc.	P: David Moutoux R: Colm Moran	Termination

# PENDING CASES

## BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
13.	PR-2346-12 10-10-12	Resumed Pre- Hearing Conference: 1-14-13	Myricks Motorcycle, Inc. dba San Luis Motorsports v. Kawasaki Motors Corp., U.S.A. (Motorcycles)	P: Andrew Hays R: Mo Sanchez Kevin Colton	Termination
14.	*PR-2347-12 10-12-12	Resumed Pre- Hearing Conference: 1-14-13	Myricks Motorcycle, Inc. dba San Luis Motorsports v. Kawasaki Motors Corp., U.S.A. (ATVs)	P: Andrew Hays R: Mo Sanchez Kevin Colton	Termination
15.	PR-2348-12 10-12-12	Hearing Readiness Conference: 2-5-13 Merits Hearing: 3-4-13	West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC	P: Mike Flanagan Gavin Hughes R: Greg Oxford	Termination
16.	PR-2349-12 10-30-12	Resumed Pre- Hearing Conference: 1-10-13	Veracom Automotive Group, LLC dba Vespa San Mateo v. Piaggio Group Americas, Inc. (Vespa)	P: Philip Branzuela R: Michael Babich	Termination
17.	PR-2351-12 11-15-12	Merits Hearing: 6-10-13	Stockton Automotive Development LLC dba Stockton Nissan v. Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
18.	*PR-2354-12 11-28-12	Resumed Pre- Hearing Conference: 1-10-13	Veracom Automotive Group, LLC dba Vespa San Mateo v. Piaggio Group Americas, Inc. (Piaggio)	P: Philip Branzuela R: Michael Babich	Termination
19.	PR-2355-12 12-14-12	Continued Pre- Hearing Conference: 1-9-13	D & A Automotive, O.C. Genuine Scooters of Santa Ana v. Genuine Scooters	P: Terry Tuchman R: Trey Duran	Establishment
20.	PR-2356-12 12-14-12	Continued Pre- Hearing Conference: 1-9-13	D & A Automotive, O.C. Genuine Scooters of Tustin v. Genuine Scooters	P: Terry Tuchman R: Trey Duran	Establishment

# PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
21.	PR-2357-12 12-18-12	Resumed Pre- Hearing Conference: 1-10-13	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen of America (Elk Grove)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Modification

## CASES REGARDING BREACH OF STIPULATED DECISION AND ORDER

1.	PR-2293-11 Breach Case 8-29-12 SDO dispute	Merits Hearing: 3-20-13	Clippinger Motors, Inc. v. Mazda Motors of America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	
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## Petitions

	CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
1.			-----None Pending----	

## Appeals

	CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
1.			-----None Pending----	

# **C. JUDICIAL REVIEW**

# Judicial Review

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**Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure, § 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure, § 1084).**

1. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

*California Superior Court, Sacramento County Case No. 34-2012-80001301; New Motor Vehicle Board Case No. CRT-264-12, Protest No. PR-2201-10.*

*Background: At the Board's regularly scheduled meeting on August 23, 2012, the Board's public and dealer members, meeting in executive session, decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahon's RV (Mega) on January 29, 2010, [Protest No. PR-2201-10 (Colton/Irvine)]. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of August 23, 2012. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Irvine location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).*

*Current (Writ) Action: On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2201-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.*

*The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.*

*On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.*

*Thus, all further reporting of this case will be made under Board case number CRT-258-12, below at item number 7.*

2. *ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.*

*California Superior Court, Sacramento County Case No. 34-2012-80001300; New Motor Vehicle Board Case No. CRT-263-12, Protest No. PR-2199-10.*

*Background: At the Board's regularly scheduled meeting on August 23, 2012, the Board's public and dealer members, meeting in executive session, decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahon's RV (Mega) on January 29, 2010. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of August 23, 2012. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Colton location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).*

*Current (Writ) Action: On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2199-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.*

*It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.*

*On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.*

*Thus, all further reporting of this case will be made under Board case number CRT-258-12, below at item number 7.*



3. HARLEY-DAVIDSON MOTOR COMPANY, a Corporation, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, RIVERSIDE MOTORCYCLE, INC., DBA SKIP FORDYCE HARLEY-DAVIDSON, Real Party in Interest.

California Superior Court, Riverside County Case No. R1C1215075;  
New Motor Vehicle Board Case No. CRT-262-12, Protest No. PR-2310-11.

*Background: On July 20, 2011, Riverside Motorcycle, Inc, dba Skip Fordyce Harley-Davidson (Riverside) filed a protest of a notice, dated June 23, 2011, of the intention of Harley-Davidson Motor Company (HDMC) to terminate Riverside's Harley-Davidson Motorcycle Dealer Contract (franchise) with HDMC. On August 16, 2012, following a hearing on the merits of the protest before Administrative Law Judge Victor D. Ryerson, Judge Ryerson issued a "Proposed Decision," sustaining Riverside's protest. Judge Ryerson found that HDMC had not met its burden of proof under Vehicle Code section 3066(b) to establish that there was good cause to terminate Riverside's franchise, but conditioned the decision on Riverside's reimbursement on some of HDMC's expenses.*

*At the Board's regularly scheduled meeting on August 22, 2012, the Board adopted Judge Ryerson's Proposed Decision as the Board's final decision in the matter.*

*Current (Writ) Action: On October 9, 2012, the Board received copies of the Verified Petition for Writ of Mandate and accompanying papers advanced by HDMC for filing in the California Superior Court for Riverside County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision sustaining Riverside's protest and allow the proposed termination to proceed, and (2) for such other relief as the Court deems just and proper.*

*On November 15, 2012, the Board received Riverside's Notice of Appearance and Preliminary Opposition to Petitioner's Writ of Mandate.*

*It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.*

*A case management conference was held on December 10, 2012. The parties are to stipulate to a briefing schedule. Another case management conference is set for February 4, 2013.*

4. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP. d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-00130525;  
New Motor Vehicle Board Case No. CRT-261-12, Protest No. PR-2233-10.

*Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (Mega) filed protest number PR-2233-10, with the Board on May 11, 2010. The protest alleged that ROADTREK MOTORHOMES, INC. (Roadtrek) had failed to give Mega and the Board timely notice of Roadtrek's*

*intention to establish an additional Roadtrek dealer in Colton, California in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances. On July 30, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protest. Judge Hagle found that Roadtrek had failed to give Mega timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances.*

*At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.*

*Current (Writ) Action: On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County, seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2233-10 is not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest no. PR-2233-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.*

*It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.*

*On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.*

*Thus, all further reporting of this case will be made under Board case number CRT-258-12, below at item number 7.*

5. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

*California Superior Court, Sacramento County Case No. 34-2012-80001280; New Motor Vehicle Board Case No. CRT-260 -12, Protest Nos. PR-2205-10, PR-2211-10 and PR-2212-10.*

*Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (Mega) filed protest number PR-2205-10 with the Board on February 9, 2010, and filed protests numbered PR-2211-10 and PR-2212-10, with the Board on February 18, 2010. The protests alleged that ROADTREK MOTORHOMES, INC. (Roadtrek) failed to fulfill an agreement with Mega to pay Mega's claims under the terms of Roadtrek's franchisor incentive program. On July 26, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protests. Judge Hagle found that Roadtrek had failed to fulfill obligations to Mega relative to "franchisor incentive program" claims and that Roadtrek had not timely and appropriately paid approved claims.*

*At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.*

*Current (Writ) Action: On October 1, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest nos. PR-2205-10, PR-2222-10 [sic], and PR-2212-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.*

*It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.*

*On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.*

*Thus, all further reporting of this case will be made under Board case number CRT-258-12, below at item number 7.*

6. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001281; New Motor Vehicle Board Case No. CRT-259-12, Protest Nos. PR-2206-10, PR-2208-10 and PR-2209-10.

*Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (MEGA) filed protests number PR-2206-10 with the Board on February 9, 2010, and filed protest numbers PR-2208-10 and PR-2209-10 with the Board on February 18, 2010. The protests alleged essentially that ROADTREK MOTORHOMES, INC. (Roadtrek) failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing. On July 25, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protests. Judge Hagle concluded that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing, that Roadtrek had failed to provide appropriate notice of its purported approval or disapproval of warranty claims, and that Roadtrek had failed to timely and appropriately pay approved warranty claims.*

*At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.*

*Current (Writ) Action: On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest nos. PR-2206-10, PR-2208-10, and PR-2209-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.*

*It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.*

*On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.*

*Thus, all further reporting of this case will be made under Board case number CRT-258-12, below at item number 7.*

7. *MEGA RV CORP, a California corporation doing business as MCMAHON'S RV, Petitioner vs. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA, Respondent, ROADTREK MOTORHOMES, INC., Real Party in Interest.*  
*California Superior Court, Orange County Case No. 30-2012-00602460-CU-WM-CJC; New Motor Vehicle Board Case No. CRT-258-12, Protest Nos. PR-2244-10 and PR-2245-10.*

*Background: Protestant Mega RV Corp., a California corporation doing business as McMahon's RV (Mega) filed protests PR-2244-10 and PR-2245-10 with the Board on July 13, 2010. The protests alleged that Roadtrek Motorhomes, Inc. (Roadtrek) violated Vehicle Code section 3070 and should not be permitted to terminate Mega's franchises at its California dealership locations in Scotts Valley (PR-2245-10) and in Colton and Irvine (PR-2244-10).*

*On July 24, 2012, Administrative Law Judge Anthony M. Skrocki issued a proposed order granting Roadtrek's motion to dismiss Protest No. 2245-10. Judge Skrocki concluded that, in light of the circumstances, including the fact that Mega's dealership location in Scott's Valley had not been in operation for over one year and was unlikely to reopen, any decision by the Board on the merits of the protest would not be meaningful and would not effectuate relevant legislative intent.*

*On July 30, 2012, following a hearing on the merits before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," overruling Protest No. PR-2245-10. Judge Hagle concluded that the protest was not viable relative to the Irvine location, inasmuch as Mega had closed that dealership location, relocated the dealership to Westminster, California, and there was no franchise for Mega to sell Roadtrek vans from the Westminster dealership. Judge Hagle also concluded that Roadtrek had established good cause to terminate the Roadtrek franchise of Mega at Colton, California.*

*At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision and Judge Skrocki's proposed order as the Board's final decisions in the matter.*

*Current (Writ) Action: On October 2, 2012, Mega filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Orange County (the Court). The petition seeks a judgment (i.e., writ of mandate), that would, (1) direct and compel the Board to set aside its decisions in Protest Nos. PR-2244-10 and PR-2245-10 dated August 23, 2012, (2) require the Board to sustain those protests and preclude the proposed termination of Mega's Roadtrek franchises with addresses in Colton and Irvine, California, (3) grant Mega an immediate stay of enforcement of the Board's decisions relative to Protest Nos. 2244-10 and 2245-10, (4) order the Board to take no further action relative to the protests pending resolution of the writ petition, (5) award petitioner its costs, and (6) order such other relief as the court may consider just and proper.*

*The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.*

*On November 20, 2012, the California Superior Court for the County of Sacramento ordered, (a) consolidation, for all purposes, of that court's cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, (b) case number 34-2012-80001280 designated as the lead case, and (c) transfer of the consolidated cases to the Superior Court of California for the County of Orange for consolidation with the instant case - No. 30-2012-00602460-CU-WM-CJC.*

*In November 2012, Mega requested that the Court issue a Temporary Restraining Order (TRO) staying the operative effect of the Board's Decision. Roadtrek opposed the request and the Court denied the request, without prejudice in the event Mega wished to present the issue in a noticed motion. Mega filed such a motion. On December 14, 2012, the Court heard the motion and took the matter under submission.*

*The Court has scheduled a case management conference for March 6, 2013.*

8. SANTA MONICA AUTO GROUP, dba SANTA MONICA INFINITI, a California Corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, a California State Administrative Agency, Respondent, INFINITI DIVISION, NISSAN NORTH AMERICA, INC. (previously erroneously named as Infiniti West, a Division of Nissan North America, Inc.), Real Party in Interest.  
California Superior Court, Los Angeles County Case No. BS138615;  
New Motor Vehicle Board Case No. CRT-257-12, Protest No. PR-2330-12.

Background: Protestant Santa Monica Auto Group, dba Santa Monica Infiniti (SMI) filed a protest with the Board on March 29, 2012, alleging that INFINITI DIVISION, NISSAN NORTH AMERICA, INC. (Infiniti) should not be permitted to complete its plans to establish a dealer in Beverly Hills.

On April 30, 2012, Infiniti filed a motion seeking dismissal of SMI's protest based on Infiniti's contention that SMI had previously waived its right to protest Infiniti's intended action.

Administrative Law Judge Lonnie M. Carlson heard Infiniti's motion, and on July 6, 2012, Judge Carlson issued his written ruling on the motion, entitled "Proposed Order Granting Respondent's Motion to Dismiss Protest." By order dated July 16, 2012, the Board adopted Judge Carlson's proposed order as the Board's final decision in the matter.

Current (Writ) Action: On July 26, 2012, SMI filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), that would, (a) direct the Board to vacate the Board's decision of July 16, 2012, (b) direct the Board to issue an order denying Infiniti's motion of April 30, 2012, and (c) award such other relief in SMI's favor as the Court deems appropriate. SMI also filed a

written petition (“SMI’s stay petition”) asking the Court for an order staying the operation of the Board’s Decision of July 16, 2012. On August 7, 2012, Infiniti served papers opposing SMI’s stay petition. On August 7, 2012, the Court held a hearing on SMI’s stay petition, and the parties await the Court’s ruling on the stay petition.

*On August 31, 2012, the Board received Infiniti’s Answer to SMI’s writ petition.*

*It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.*

9. HARLEY-DAVIDSON MOTOR COMPANY, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, LAIDLAW’S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW’S HARLEY-DAVIDSON, Real Party in Interest. California Superior Court, Los Angeles County Case No. BS136877; New Motor Vehicle Board Case No. CRT-256-12, Protest No. PR-2299-11.

Background: On May 12, 2011, Laidlaw’s Harley-Davidson Sales, Inc. dba Laidlaw’s Harley-Davidson (Laidlaw’s) filed a protest of a notice, dated April 14, 2011, of the intention of Harley-Davidson Motor Company (HDMC) to terminate Laidlaw’s Harley-Davidson Motorcycle Dealer Contract (franchise) with HDMC. On May 9, 2012, following a hearing on the merits of the protest before Administrative Law Judge Marilyn Wong, JUDGE Wong issued a “Proposed Decision,” sustaining Laidlaw’s protest. JUDGE Wong found that HDMC had not met its burden of proof under Vehicle Code section 3066(b) to establish that there was good cause to terminate Laidlaw’s franchise.

At the Board’s regularly scheduled meeting on May 22, 2012, the Board’s public members, meeting in executive session, adopted Judge Wong’s Proposed Decision as the Board’s final decision in the matter, with the addition of conditions requiring HDMC to comply with specified accounting activities and requiring Laidlaw’s to comply with specific training, reporting, compliance and reimbursement activities. On May 24, 2012, the Board issued the written Decision in the matter.

Current (Writ) Action: On July 9, 2012, the Board received copies of the Verified Petition for Writ of Mandate and accompanying papers advanced by HDMC for filing in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision sustaining Laidlaw’s protest and allow the proposed termination to proceed, and (2) for such other relief as the Court deems just and proper.

It has been determined that there is no substantial state interest at issue in the writ action. The parties have been informed of that determination, and they have, in turn, informed the Court of the determination. Thus, the Board will not participate in the action.

*The Court has set the following briefing schedule in the matter: Opening Brief due March 10, 2013; Opposition Brief due April 10, 2013; Reply Brief due May 1, 2013.*

*The Court has also scheduled a hearing on the petition, for May 10, 2013 at 9:30 a.m. in Department 86 of the Stanley Mosk Courthouse located at 111 North Hill Street, Los Angeles, CA 90036.*

10. VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation,  
Petitioner v. NEW MOTOR VEHICLE BOARD, an administrative agency of the  
State of California, Respondent, SHAYCO, INC., dba ONTARIO VOLKSWAGEN,  
Real Party in Interest.  
California Superior Court, Sacramento County Case No. 34-2012-80001045;  
New Motor Vehicle Board Case No. CRT-255-12, Protest No. PR-2265-10.

Background: At the Board's regularly scheduled meeting on September 27, 2011, the Board's public members, meeting in executive session, decided to sustain the protest filed by Protestant Shayco, Inc., dba Ontario Volkswagen (Ontario VW) on August 13, 2010. At the Board's regularly scheduled meeting on December 13, 2011, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of September 27, 2011. The Board found that Ontario VW had met its burden of proof under Vehicle Code section 3066(b) that there is good cause not to establish a Volkswagen dealership in Montclair and ruled that respondent would not be permitted to proceed with the establishment of the new franchise at the proposed location in Montclair.

Current (Writ) Action: On January 24, 2012, Volkswagen Group of America, Inc. (VWoA) filed a Verified Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision, (2) directing the Board to issue a decision overruling Ontario VW's Protest, thus allowing the establishment of a new Volkswagen dealership in Montclair, (3) awarding VWoA costs of suit and attorney fees, and (4) awarding VWoA such other relief as the Court deems just and proper.

~~It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.~~

On February 23, 2012, Ontario VW filed its Answer to VWoA's writ petition. On March 2, 2012, Ontario VW filed its Amended Answer to VWoA's writ petition.

*On October 23, 2012, VWoA's filed a notice of the hearing on VWoA's petition. The hearing is scheduled to begin at 9:00 a.m., on Friday, December 7, 2012, in Department 31 of the Superior Court.*

*On October 23, 2012, VWoA also filed, (1) its opening brief in support of its petition, and (2) 273 pages of documents, together with a request that the Court take judicial notice of the documents.*



*The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.*

*On November 9, 2012, VWoA filed notice that VWoA had lodged, with the Court, the record of the administrative proceedings before the Board. Also on November 9, Ontario VW filed a motion seeking postponement of the December 7 hearing. Also on November 9, the Board, acting through the Office of the Attorney General, filed the Board's, (1) notice of its withdrawal of its previous notice of nonparticipating in the proceeding, (2) request for postponement of the December 7 hearing, (3) opposition to VWoA's petition, and (4) answer to VWoA's petition. On November 13, 2012, VWoA filed its opposition to Ontario's motion, and on that same date, the Court denied the motion and confirmed the December 7 hearing date.*

*On November 19, 2012, Ontario VW filed, (1) its opposition to VWoA's opening brief, and (2) Ontario VW's opposition to VWoA's request for judicial notice.*

*Following the hearing on December 17, 2012, the Court took the matter under submission.*

- ~~4. LEECHAN, INC. HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.~~  
~~— California Superior Court, Sacramento County Case No. 34-2011-80000987;~~  
~~— New Motor Vehicle Board Case No. CRT-254-11, Protest No. PR-2307-11.~~

~~Background: This case relates closely to NNVB Case No. CRT-253-11, discussed below as item number 5.~~

~~Protestant Lechan, Inc. Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on June 21, 2011, alleging that Real Party in Interest Nissan North America, Inc. (Nissan) untimely and improperly charged back incentive monies in the amount of \$64,350.00. On July 15, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after Nissan's December 9, 2009, written report of disapproved incentive claims.~~

~~Nissan's motion was heard by Administrative Law Judge Jerold A. Prod, and on September 12, 2011, Judge Prod issued his ruling on the motion, entitled "Amended Proposed Order Granting Respondent's Motion to Dismiss Second Protest." By order dated September 27, 2011, the Board adopted Judge Prod's ruling as the Board's final decision in the matter.~~

~~Current (Writ) Action: On October 27, 2011, Hanlees filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), that would, (a) direct the Board to both vacate the Board's decision of September 27, 2011, and deny Nissan's motion of July 15, 2011, and (b) award Hanlees its costs in the writ proceeding. On January 10, 2012, Hanlees filed its opening brief in support of its~~

~~petition. On January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents generated by the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.~~

~~It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.~~

~~Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-253-11, discussed below. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a 'cover letter' from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.~~

~~The time for appealing the Superior Court's judgment has passed, and the judgment has therefore become final. Thus, future Executive Director Reports will not report on this matter.~~

~~5. LEECHAN, INC. dba HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.~~

~~— California Superior Court, Sacramento County Case No. 34-2011-80000897;~~

~~— New Motor Vehicle Board Case No. CRT-253-11, Protest No. PR-2291-11.~~

~~Background: Protestant Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on February 25, 2011, alleging that Real Party in Interest Nissan North America, Inc. (Nissan) improperly charged back and refused to pay incentive monies to Hanlees in the amount of approximately \$60,000.00. On April 1, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after receiving notice of Nissan's disapproval of Hanlees' incentive claims. Nissan's motion was heard by Administrative Law Judge Diana Woodward Hagle, and on May 4, 2011, Judge Woodward Hagle issued a Proposed Order granting Nissan's motion. At its regularly scheduled meeting on May 26, 2011, the Board modified the Proposed Order (without changing the result) and adopted the modified Proposed Order as the Board's final Decision in the matter.~~

~~Current (Writ) Action: On June 24, 2011, Hanlees (acting in its corporate name, Leehan, Inc.) filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate) that would (a) set aside and vacate the Board's decision and order of May 26, 2011, and (b) deny Nissan's motion of April 1, 2011 (discussed above). On January 10, 2012, Hanlees filed its opening brief in support of its petition. On~~

~~January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents created during the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.~~

~~It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.~~

~~Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-254-11, discussed above. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a 'cover letter' from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.~~

~~The time for appealing the Superior Court's judgment has passed, and the judgment has therefore become final. Thus, future Executive Director Reports will not report on this matter.~~

611. POWERHOUSE MOTORSPORTS GROUP, INC. and TIMOTHY L. PILG v. YAMAHA MOTOR CORP, INC.; POWERHOUSE MOTORSPORTS, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent, YAMAHA MOTOR CORP INC., Real Party in Interest.

California Court of Appeal, Second District, Ventura Division Case No. B236705;  
San Luis Obispo Superior Court Case No. CV09-8090;  
New Motor Vehicle Board Case No. CRT-249-09, Protest No. PR-2122-08.

Background: On June 5, 2009, the Board upheld a May 22, 2009, proposed Order granting Yamaha's Motion to Dismiss Powerhouse's Protest against termination of its franchise. The Order found that Powerhouse had failed to timely file its Protest and Powerhouse failed to establish that Yamaha was estopped from terminating the dealership.

The original complaint, filed in Superior Court on March 6, 2009, alleges Yamaha unreasonably withheld its consent for Powerhouse to transfer its dealership in violation of Vehicle Code section 11713.3, intentionally interfered with Powerhouse's contractual relations, intentionally interfered with Powerhouse's business advantage, and breached its contract with Powerhouse. Identical causes of action were alleged in behalf of dealer principal Timothy L. Pilg. In its First Amended Complaint, filed July 7, 2009, Powerhouse added a Petition for a Writ of Administrative Mandamus challenging the Board's June 5, 2009, Final Decision Dismissing Protest No. PR-2122-08. The Petition seeks reversal of the Board's Final Decision, based on allegations that the Board prejudicially abused its discretion and exceeded its jurisdiction.

On July 23, 2009, Board President Flesh determined the Board would not participate in the action by means of the Attorney General's Office. The matters before the court, including a Motion to Strike, a Motion to Bifurcate, and a Demurrer to the First Amended Complaint, were heard November 17, 2009, resulting in a Final Ruling denying the Demurrer and the Motion to Strike, but granting the Motion to Bifurcate. The court further ruled that the Writ Petition would be tried by the court separately prior to the other causes of action, and the court stayed all discovery until the conclusion of the Writ action. Following the hearing of the writ action, the Court ruled on July 2, 2010, that Yamaha prevailed on the Writ action. Based on that ruling, the court entered judgment in the writ action, on August 9, 2010, in favor of Yamaha.

A Hearing on a Motion for Summary Judgment was held on January 4, 2011. The court initially took the matter under submission, and on January 31, 2011, the court entered a ruling denying Yamaha's motion for summary judgment and in the alternative summary adjudication. The ruling is adverse to the Board's jurisdiction and the Judge indicated that the Board does not have jurisdiction over protests and "...invocation of the Board's limited authority [is] optional..."

A jury trial, on the remaining causes of action and scheduled for February 7, 2011, was continued to February 14, 2011, and continued again to May 31, 2011.

On February 7, 2011, Yamaha filed a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief [stay of trial proceedings]," in the Second District of the California Court of Appeal, case number B230699. The Board in consultation with Jeffrey Schwarzschild, Deputy Attorney General and Augustin Jimenez, General Counsel, Business, Transportation & Housing Agency ("Agency") filed a declaration containing statistical information on the types of actions filed with the Board, i.e., protests, petitions, and appeals. On February 10, 2011, the court denied the writ because, "...petitioner neglected to cite or argue the application of Vehicle Code section 3050, subdivision (e), and South Bay Creditors Trust v. General Motors Acceptance Corp. (1999) 69 Cal.App.4<sup>th</sup> 1068, 1079-1080."

On February 14, 2011, Yamaha re-filed the petition in the Second District, case number B230830. This petition included the Board's declaration and the citations and arguments previously noted by the court. On February 17, 2011, the court denied the writ and request for stay.

On February 28, 2011, Yamaha filed a Petition for Review in the California Supreme Court, case number S190950, seeking review of the denial, by the Second District Court of Appeal, of Yamaha's writ petition and request for stay. The Board received the necessary approvals from Glenn Stevens, the Public Members of the Board, Agency, and the Governor's Office to file an amicus curiae letter in support of Yamaha's petition for review on the jurisdictional issue of whether final Board decisions are binding with regard to other legal proceedings when the underlying writ concerning the final Board decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action. The

amicus curiae letter was filed on March 9, 2011. On April 13, 2011, the California Supreme Court denied Yamaha's Petition for Review and Application for Stay.

In a letter dated May 5, Yamaha asked the superior court to review the Board's amicus curiae letter. Counsel for Yamaha indicated that it would subpoena Robin Parker to testify concerning the content of the amicus curiae letter around May 31 or June 1. Agency was apprised of this.

A multi-day jury trial began on May 31, 2011. After being subpoenaed by Yamaha, Robin Parker testified on June 13. The jury awarded Powerhouse and Mr. Pilg \$1,136,000 in compensatory damages and \$200,000 in punitive damages. During the course of the trial, the bankruptcy trustee (Namba) was substituted for Mr. Pilg.

A briefing schedule was set on Yamaha's motion for a judgment notwithstanding the verdict and motion for new trial. An in-person hearing was held on August 2, 2011. Both motions were denied. Counsel for Yamaha indicated that a notice of appeal would be filed.

Plaintiffs filed a "Motion for Prejudgment Interest under Civil Code section 3287(a), or in the Alternative, Civil Code section 3287(b)." A hearing was held on August 9, 2011. The tentative order concluded that attorneys' fees are allowed under Vehicle Code section 11726(a) but not under the contract. Plaintiffs requested \$703,000 adjusted upward by a 1.7 multiplier. The court indicated this amount will be reduced by the fees incurred in connection with the protest and petition for writ of administrative mandate.

Yamaha filed a "Motion to Tax Costs Requested by Plaintiff's". This matter was resolved by counsel based on the court's ruling on the attorney's fees.

Powerhouse sought to enforce the \$2,175,000 judgment against Yamaha prior to the deadline for Yamaha to file an appeal, i.e., October 17, 2011. On September 7, 2011, Yamaha filed an Ex Parte Application for an Order Staying Enforcement of Judgment. A hearing was held on September 8, 2011. The motion was granted and enforcement of the judgment was stayed until October 17. On October 6, 2011, the law firm of Gibson, Dunn & Crutcher LLP was associated in as counsel for Yamaha.

Current Appeal: On October 6, 2011, Yamaha filed a Notice of Appeal. On November 7, 2011, plaintiffs filed a Notice of Cross-Appeal, in which plaintiffs appeal from, among other matters, "The judgment entered on August 9, 2011, to the extent that it incorporates the trial court's ruling of July 2, 2010, denying Powerhouse's eighth cause of action under Code of Civil Procedure Section 1094.5 for Petition for Administrative Writ of Mandate."

The Second District of the California Court of Appeal has established case number B236705 for the appeal and cross-appeal. On February 24, 2012, the record of important documents accumulated during the administrative and trial proceedings, was filed in the Court of Appeal.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

The Court of Appeal ordered the following briefing schedule: (1) by April 4, Yamaha may file its opening brief; (2) within the following 30 days, *appellants* (collectively, "Powerhouse") may file a brief in opposition to Yamaha's opening brief, and may file an opening brief on cross-appeal; (3) within the following 30 days Yamaha may file a brief in reply to Powerhouse's brief opposing Yamaha's appeal, and may file a brief in opposition to Powerhouse's opening brief on cross-appeal; (4) within the following 20 days Powerhouse may file a brief in reply to Yamaha's brief in opposition to Powerhouse's opening brief on cross-appeal. On April 20, 2012, the Court of Appeal noted that on April 10, 2012, appellant had provided that court with a notice (also served and filed in superior court) specifying a portion of the record that the clerk or reporter had omitted and requested that the clerk or reporter prepare, certify, and send that supplemental record to the Court of Appeal. The Court of Appeal expects that it will receive the supplemental record by May 10, 2012. These events have delayed the due date for the filing of Appellant's opening brief, until 30 days after the filing of the supplemental record.

On May 17, 2012, Yamaha filed appellant's opening brief. On August 1, 2012, Powerhouse filed respondents' opening brief.

In a letter to the Board dated May 8, 2012, counsel for Yamaha requested that the Board consider filing, in connection with the pending appellate case, a "friend of the court" (*amicus curiae*) brief. Counsel described the essential objectives of the brief, as follows: ". . . to educate the Court of Appeal regarding the jurisdiction of the Board, explain the expertise of the Board in adjudicating protests, and underscore the mission of the Board to serve all constituents in the new motor vehicle industry: dealers, manufacturers and the general consuming public." At its regularly scheduled meeting on May 22, 2012, the Board decided to decline Yamaha's request.

Counsel for Yamaha asked the Board to reconsider the Board's decision to decline Yamaha's request that the Board consider filing an *amicus curiae* brief in the pending appellate case. Yamaha's request ~~is~~ was scheduled for consideration by the Board at its regularly scheduled meeting on August 23, 2012. *At that meeting the Board denied Yamaha's request.*

*On August 1, 2012, Powerhouse filed its opening brief, and on August 23, 2012, filed amendments to the brief.*

*On November 9, 2012, Yamaha filed its opposition to Powerhouse's opening brief.*

*On December 17, 2012, Powerhouse filed its reply brief.*

# D. NOTICES FILED

PURSUANT TO  
VEHICLE CODE SECTIONS  
3060/3070 AND 3062/3072

# NOTICES FILED

## PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

AUGUST 7, 2012, THROUGH JANUARY 8, 2013

**These are generally notices relating to termination or modification (sections 3060 and 3070) and establishment, relocation, or off-site sales (sections 3062 and 3072).**

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW	
CHRYSLER		CHRYSLER	
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD		FORD	1
GOSHEN		GOSHEN	
GM	20	GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	2
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI	9	KAWASAKI	1
KTM	1	KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN	1	NISSAN	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN	1	VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	33	MISCELLANEOUS	
TOTAL	65	TOTAL	4